

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 454 be amended to read as follows:

- 1 Page 1, line 14, reset in roman "living unit of a".
- 2 Page 2, line 15, strike "home" and insert "**continuing care**
- 3 **retirement community**".
- 4 Page 2, strike lines 16 through 18.
- 5 Page 2, line 20, strike "home" and insert "**continuing care**
- 6 **retirement community**".
- 7 Page 2, line 29, strike "continuing".
- 8 Page 3, between lines 4 and 5, begin a new paragraph and insert:
- 9 "SECTION 2. IC 23-2-4-2 IS AMENDED TO READ AS
- 10 FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
- 11 Sec. 2. This chapter applies to any person who:
- 12 (1) enters into a continuing care agreement in Indiana to provide
- 13 care at a ~~home~~ **continuing care retirement community** located
- 14 either inside Indiana or outside Indiana;
- 15 (2) enters into a continuing care agreement outside Indiana to
- 16 provide care at a ~~home~~ **continuing care retirement community**
- 17 located in Indiana;
- 18 (3) extends the term of an existing continuing care agreement in
- 19 Indiana to provide care at a ~~home~~ **continuing care retirement**
- 20 **community** located either inside Indiana or outside Indiana;
- 21 (4) extends the term of an existing continuing care agreement
- 22 outside Indiana to provide care at a ~~home~~ **continuing care**
- 23 **retirement community** located in Indiana; or
- 24 (5) solicits the execution of a continuing care agreement by
- 25 persons in Indiana."
- 26 Page 3, line 7, strike "home" and insert "**continuing care**
- 27 **retirement community**".
- 28 Page 3, line 8, delete "home," and insert "**continuing care**
- 29 **retirement community**,".
- 30 Page 3, line 13, delete "home," and insert "**continuing care**
- 31 **retirement community**,".

Page 3, line 16, delete "home." and insert **"continuing care retirement community."**

Page 3, line 17, strike "home," and insert **"continuing care retirement community,"**

Page 3, line 19, strike "home;" and insert **"continuing care retirement community;"**

Page 3, line 20, strike "home" and insert **"continuing care retirement community"**

Page 3, line 24, strike "home." and insert **"continuing care retirement community."**

Page 4, between lines 17 and 18, begin a new paragraph and insert:
 "SECTION 4. IC 23-2-4-4 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
 Sec. 4. The initial disclosure statement shall contain the following
 information:

(1) The name and business address of the provider.

(2) If the provider is a partnership, corporation, limited liability company, or association, the names and duties of its officers, directors, trustees, partners, members, or managers.

(3) The name and business address of any person having a five percent (5%) or greater ownership interest in the provider or manager of the ~~home~~; **continuing care retirement community**.

(4) A description of the business experience of the provider and its officers, directors, trustees, partners, or managers.

(5) A statement as to whether the provider or any of its officers, directors, trustees, partners, or managers, within ten (10) years prior to the date of the initial disclosure statement:

(A) was convicted of a crime;

(B) was a party to any civil action for fraud, embezzlement, fraudulent conversion, or misappropriation of property that resulted in a judgment against ~~him~~; **the provider or individual**;

(C) had a prior discharge in bankruptcy or was found insolvent in any court action; or

(D) had any state or federal licenses or permits suspended or revoked in connection with any health care or continuing care activities, or related business activities.

(6) The identity of any other ~~home~~ **continuing care retirement community** currently or previously operated by the provider or manager of the ~~home~~; **continuing care retirement community**.

(7) The location and description of other properties, both existing and proposed, of the provider in which the provider owns a twenty-five percent (25%) ownership interest, and on which ~~homes~~ **continuing care retirement communities** are or are intended to be located.

(8) A statement as to whether the provider is, or is affiliated with, a religious, charitable, or other nonprofit association, and the

1 extent to which the affiliate organization is responsible for the
2 financial and contractual obligations of the provider.

3 (9) A description of all services to be provided by the provider
4 under its continuing care agreements with contracting parties, and
5 a description of all fees for those services, including conditions
6 under which the fees may be adjusted.

7 (10) A description of the terms and conditions under which the
8 continuing care agreement can be cancelled, or fees refunded.

9 (11) Financial statements of the provider prepared in accordance
10 with generally accepted accounting principles applied on a
11 consistent basis and certified by an independent certified or
12 public accountant, including a balance sheet as of the end of the
13 provider's last fiscal year and income statements for the last three
14 (3) fiscal years, or such shorter period of time as the provider has
15 been in operation.

16 (12) If the operation of the ~~home~~ **continuing care retirement**
17 **community** has not begun, a statement of the anticipated source
18 and application of funds to be used in the purchase or
19 construction of the ~~home~~, **continuing care retirement**
20 **community**, and an estimate of the funds, if any, which are
21 anticipated to be necessary to pay for start-up losses.

22 (13) A copy of the forms of agreement for continuing care used by
23 the provider.

24 (14) Any other information that the commissioner may require by
25 rule or order.

26 SECTION 4. IC 23-2-4-5 IS AMENDED TO READ AS FOLLOWS
27 [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 5. (a) Each
28 year after the initial year in which a ~~home~~ **continuing care retirement**
29 **community** is registered under section 3 of this chapter, the provider
30 shall file with the commissioner within four (4) months after the end of
31 the provider's fiscal year, unless otherwise extended by the written
32 consent of the commissioner, an annual disclosure statement which
33 shall consist of the financial information set forth in section 4(11) of
34 this chapter.

35 (b) The annual disclosure statement required to be filed with the
36 commissioner under this section shall be accompanied by an annual
37 filing fee of one hundred dollars (\$100).

38 SECTION 5. IC 23-2-4-6 IS AMENDED TO READ AS FOLLOWS
39 [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]: Sec. 6. (a) A
40 provider shall amend its initial or annual disclosure statement filed
41 with the commissioner under section 3 and section 5 of this chapter at
42 any time if necessary to prevent the initial or annual disclosure
43 statement from containing any material misstatement of fact or
44 omission of a material fact.

45 (b) Upon the sale of a ~~home~~ **continuing care retirement**
46 **community** to a new provider, the new provider shall amend the
47 currently filed disclosure statement to reflect the fact of sale and any

other fact that would be required to be disclosed under section 4 of this chapter if the new provider were filing an initial disclosure statement.".

Page 4, between lines 32 and 33, begin a new paragraph and insert:
 "SECTION 6. IC 23-2-4-10 IS AMENDED TO READ AS
 FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
 Sec. 10. (a) Except as provided by section 11 of this chapter, the
 commissioner shall require, as a condition of registration, that:

(1) the provider establish an interest-bearing escrow account with
 a bank, trust company, or other escrow agent approved by the
 commissioner; and

(2) any entrance fees received by the provider prior to the date the
 resident is permitted to occupy the living unit in the ~~home~~
continuing care retirement community be placed in the escrow
 account, subject to release as provided by subsection (b).

(b) If the entrance fee gives the resident the right to occupy a living
 unit that has been previously occupied, the entrance fee and any
 income earned thereon shall be released to the provider when the living
 unit is first occupied by the new resident. If the entrance fee applies to
 a living unit that has not been previously occupied by any resident, the
 entrance fee and any income earned thereon shall be released to the
 provider when the commissioner is satisfied that:

(1) aggregate entrance fees received or receivable by the provider
 pursuant to executed continuing care agreements, plus:

(A) anticipated proceeds of any first mortgage loan or other
 long term financing commitment; and

(B) funds from other sources in the actual possession of the
 provider;

are equal to at least fifty percent (50%) of the aggregate cost of
 constructing, purchasing, equipping, and furnishing the ~~home~~
continuing care retirement community and equal to at least
 fifty percent (50%) of the estimate of funds necessary to fund
 startup losses of the ~~home~~, **continuing care retirement**
community, as reported under section 4(12) of this chapter; and

(2) a commitment has been received by the provider for any
 permanent mortgage loan or other long term financing described
 in the statement of anticipated source and application of funds to
 be used in the purchase or construction of the ~~home~~ **continuing**
care retirement community under section 4(12) of this chapter,
 and any conditions of the commitment prior to disbursement of
 funds thereunder, other than completion of the construction or
 closing of the purchase of the ~~home~~, **continuing care retirement**
community, have been substantially satisfied.

(c) If the funds in an escrow account under this section and any
 interest earned thereon are not released within the time provided by this
 section or by rules adopted by the commissioner, then the funds shall
 be returned by the escrow agent to the persons who made the payment
 to the provider.

(d) An entrance fee held in escrow shall be returned by the escrow agent to the person who paid the fee in the following instances:

(1) At the election of the person who paid the fee, at any time before the fee is released to the provider under subsection (b).

(2) Upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(e) This section does not require a provider to place a nonrefundable application fee charged to prospective residents in escrow.

(f) A provider is not required to place a refurbishment fee of a prospective resident in escrow if a continuing care agreement provides that the prospective resident:

(1) will occupy the living unit within sixty (60) days after the refurbishment fee is paid; and

(2) will receive a refund of any portion of the refurbishment fee not expended for refurbishment if the continuing care agreement is cancelled before occupancy.

SECTION 7. IC 23-2-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
Sec. 12. Any money or property received by a provider as an entrance fee to a ~~home~~ **continuing care retirement community** constructed or purchased after August 31, 1982, or any income earned thereon, may be used by the provider only for purposes directly related to the construction, maintenance, or operation of that particular ~~home~~ **continuing care retirement community**. A ~~home~~ **continuing care retirement community** in operation on September 1, 1982, may not use the entrance fees or income earned thereon after August 31, 1982, for the construction, operation, or maintenance of another ~~home~~ **continuing care retirement community** constructed or purchased after August 31, 1982."

Page 5, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 9. IC 23-2-4-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
Sec. 16. (a) If a ~~home~~ **continuing care retirement community** is bankrupt and the operation of the ~~home~~ **continuing care retirement community** is terminated, the board of directors shall, subject to the approval of the commissioner, distribute from the guaranty association fund established in section 13 to the living residents of the ~~home~~ **continuing care retirement community** an aggregate amount not to exceed one-half (1/2) of the amount in the fund at the time of disbursement. The amount each living resident is entitled to receive shall be prorated, based on the total amount paid on behalf of the resident by the contracting party under the continuing care agreement. In no event may the amount paid to an individual resident under this section exceed the total amount paid on behalf of that resident under the continuing care agreement, less the total value of services received under the agreement.

(b) Any living resident of the ~~home~~ **continuing care retirement**

1 **community** shall be eligible to receive distributions under subsection
2 (a), regardless of whether any contribution to the guaranty association
3 fund has been made on behalf of the resident.

4 (c) A resident compensated under this section assigns ~~his~~ **the**
5 **resident's** rights under the continuing care agreement, to the extent of
6 compensation received under this section, to the board of directors on
7 behalf of the fund. The board of directors may require an assignment
8 of those rights by a resident to the board, on behalf of the fund, as a
9 condition precedent to the receipt of compensation under this section.
10 The board of directors, on behalf of the fund, is subrogated to these
11 rights against the assets of a bankrupt or dissolved provider. Any
12 monies or property collected by the board of directors under this
13 subsection shall be deposited in the fund.

14 (d) The subrogation rights of the board of directors, on behalf of the
15 fund, have the same priority against the assets of the bankrupt or
16 dissolved provider as those possessed by the resident under the
17 continuing care agreement.

18 SECTION 10. IC 23-2-4-21 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JANUARY 1, 2009 (RETROACTIVE)]:
20 Sec. 21. If the commissioner has reason to believe that a ~~home~~
21 **continuing care retirement community** is insolvent, the
22 commissioner may petition the superior or circuit court of the county
23 in which the ~~home continuing care retirement community~~ is located,
24 or the superior or circuit court of Marion County, for the appointment
25 of a receiver to assume the management and possession of the ~~home~~
26 **continuing care retirement community** and its assets."

27 Page 5, line 20, delete ", assisted living".

28 Page 5, line 21, delete "services,".

29 Page 5, line 23, delete "enters into a" and insert "**holds**".

30 Page 5, line 23, delete "agreement" and insert "**agreements**".

31 Page 5, line 23, delete "a resident" and insert "**at least twenty-five**
32 **percent (25%) of its residents**".

33 Page 6, line 26, delete ", subject to the" and insert "**as follows**".

34 Page 6, delete line 27.

35 Page 6, line 31, delete ";" and insert ".".

36 Page 6, line 32, before "is" insert "**A continuing care retirement**
37 **community described in this clause**".

38 Page 6, line 34, after "(B)" insert "**A proprietary organization that**
39 **was registered with the securities commissioner as a continuing**
40 **care retirement community on July 1, 2003, is not required to meet**
41 **the definition of a continuing care retirement community in**
42 **subsection (a).**

43 (C)".

44 Page 6, line 34, delete "does not" and insert "**meets the definition**
45 **set forth in subsection (a).**".

46 Page 6, delete lines 35 through 36.

47 Renumber all SECTIONS consecutively.

(Reference is to SB 454 as printed February 13, 2009.)

Senator MILLER